

# AG Jennings sues SEC for putting brokers ahead of investors

## ***“Regulation Best Interest” fails to protect investors as required by federal law***

Attorney General Kathy Jennings today joined a coalition of eight attorneys general from around the nation to file a [federal lawsuit](#) challenging the Securities & Exchange Commission’s “Regulation Best Interest” for failing to provide basic investor protections that were laid out in the historic 2010 Dodd-Frank Act.

“Thousands of Delawareans entrust their financial futures to broker-dealers and trust that they are receiving the best investment advice possible,” said Attorney General Jennings. “But the federal agency responsible for protecting investors has failed to follow Congress’ direction to ensure that broker-dealers are held to the same high fiduciary standard that investment advisors must follow under federal law. Investors deserve to know that whomever they seek investment advice from will be acting in their best interest. The SEC’s misleadingly named regulation fails to do that. Investors deserve better from the SEC; we’re fighting to make sure they get it.”

Over an earlier objection made by a coalition of attorneys general, the SEC in June adopted Regulation Best Interest, which purports to address long-standing investor confusion concerning the standards of care applicable to broker-dealers providing investment advice.

While many retail investors mistakenly believe that broker-dealers must place investors’ interests first, that has

historically not been the case. In fact, federal law has generally only required that broker-dealers' recommendations be "suitable" with respect to the investor's objectives, meaning that a broker-dealer could sell an investor a lower-quality, higher-cost investment as long as that investment otherwise met the investor's investment objectives. Alternatively, investment advisors owe their clients a fiduciary duty.

This investor confusion motivated Congress to take action in 2010. With the passing of the 2010 Dodd-Frank Act, Congress authorized the SEC to draft regulations that would align the standard of conduct for broker-dealers and investment advisors. Under the Act, the SEC was authorized to impose a uniform fiduciary duty on broker-dealers and investment advisors, and require that their recommendations be made "without regard" to their own interests. This uniform fiduciary duty would ensure that investors were protected and treated fairly, regardless of the type of financial professional with which they worked.

Despite the SEC's claim that Regulation Best Interest ends the confusion in the industry, today's suit seeks to hold the SEC accountable for its failure to heed Congress' call to action in a number of different ways. First, the regulation fails to meaningfully elevate broker-dealer standards beyond their existing suitability requirements. Second, Regulation Best Interest is likely to produce continued investor and industry confusion because it relies on a vague "best interest" standard and leaves key terms undefined.

Attorney General Jennings, through her Investor Protection Unit, joins the attorneys general of New York, California, Connecticut, Maine, New Mexico, Oregon, and the District of Columbia in filing the lawsuit.

This matter is being handled by Investor Protection Director Jillian Lazar, Assistant Investor Protection Director Marion

Quirk, Deputy Attorney General Joey Tabler, and Fraud & Consumer Protection Division Director Owen Lefkon.